100th Congress
2d Session

COMMITTEE PRINT

WMCP:
100-31

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

BACKGROUND INFORMATION AND SUMMARY OF UNITED STATES-CANADA FREE TRADE AGREEMENT IMPLEMENTING LEGISLATION

MAY 20, 1988

Printed for the use of the Committee on Ways and Means by its staff

U.S. GOVERNMENT PRINTING OFFICE

85-391

WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H782-12

85-391 O - 88 - 1

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UNITED STATES-CANADA FREE TRADE AGREEMENT IMPLEMENTING LEGISLATION

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Chapter 1. Objectives and Scope		
		Short Title (sec. 1)
		This Act may be cited as the "United States-Canada Free Trade Agreement Implementation Act of 1988."
Article 101. Establishment of the Free Trade Area		
The Governments of the United States and Canada, consistent with GATT Article XXIV, hereby establish a free trade area.	Under section 102 of the Trade Act of 1974, as amended in 1984, the Agreement may enter into force for the United States under "fast track" Congressional approval procedure only if (1) the President transmits a document to Congress containing the final legal text of the agreement together with a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect current law, and a statement of his reasons as to how the agreement serves the interest of U.S. commerce; and (2) the implementing bill is enacted into law.	Approval of Agreement and Statement of Administrative Action (sec. 101(a)) The Congress approves the Agreement entered into on January 2, 1988, and the statement of administrative action.
		Initial Implementing Regulations (sec. 102(d)) Initial regulations necessary or appropriate to carry out the statement of administrative action shall be issued within one year after the Agreement enters into force. Initial regulations will be issued within one year after the effective date of any implementing action that takes effect after entry into force.
Article 102. Objectives		Purposes (sec. 2)
Article 102 sets forth the objectives of the Agreement to: (a) eliminate barriers to trade in goods and services; (b) facilitate conditions of fair competition; (c) liberalize significantly conditions for investment; (d) establish effective procedures for joint administration of the Agreement and dispute resolution; and (e) lay the foundation for further cooperation to expand and enhance Agreement benefits.		The purposes of the Act are-- (1) to approve and implement the Agreement; (2) to strengthen and develop U.S.-Canada economic relations for mutual benefit; and (3) to establish a free trade area through the reduction and elimination of trade barriers.
Article 103. Extent of Obligations		
The Parties shall ensure that all necessary measures are taken to give effect to the provisions, including their observance, except as otherwise provided in the Agreement, by State, provincial, and local governments.	The Trade Agreements Act of 1979 approving the Tokyo Round of multilateral trade agreements and the U.S.-Israel Free Trade Area Implementation Act provide that U.S. statutes prevail if there is a conflict between a statute and any provision, or application of any provision, of these trade agreements.	Prevalence of Federal Law in Case of Conflict (sec. 102(a)) No provision of the Agreement, nor the application of any such provision to any person or circumstance which is in conflict with any Federal statute shall be given effect under the laws of the United States.

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	Normally an executive agreement approved by Congress does prevail over existing or future inconsistent State laws to the extent of the inconsistency. Under the McCarran-Ferguson Act, no Federal law can supersede any State law regulating or taxing the insurance business unless the Federal law specifically relates to the insurance business.	Relationship of Agreement to State and Local Law (sec. 102(b)) The provisions of the Agreement shall prevail over any conflicting existing or future State or local law, and the conflicting application of any State or local law to any person or circumstance, to the extent of the conflict. State law includes any State law regulating or taxing the business of insurance. Unspecified Remedies Not Created (sec. 102(c)) A private person may sue a State or local government for actions inconsistent with the Agreement or can invoke such inconsistencies as a defense in court actions involving State or local laws. No private person may sue the Federal Government for actions inconsistent with the Agreement or use such inconsistencies as a defense in court actions.
Article 104. Affirmation and Precedence The Parties affirm their existing rights and obligations with respect to each other, as of the time the Agreement enters into force, under bilateral and multilateral agreements. If there is an inconsistency between this Agreement and other agreements, this Agreement shall prevail except as provided in this Agreement.		
Article 105. National Treatment Each Party shall, to the extent provided in the Agreement, accord national treatment with respect to investment and to trade in goods and services.		
Chapter 2. General Definitions		
Article 201. Definitions of General Application The terms generally used for application of the Agreement are defined, e.g., "Harmonized System."		Harmonized System (sec. 104) If the Harmonized System (HS) is not implemented before the Agreement enters into force, the President shall proclaim modifications to the Tariff Schedules of the United States (TSUS) to give effect in the interim to provisions in the Agreement based on the HS (e.g., rule of origin classifications, schedules of tariff reductions/elimination, special tariff provisions for fresh fruits and

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		vegetables). This conversion from HS to TSUS item numbers must be published in the Federal Register at least 30 days before the Agreement enters into force. Any subsequent modifications after entry into force would be subject to the consultation/layover provisions.
Chapter 3. Rules of Origin		
Article 301. General Rules Sets forth the basic principles for establishing the origin of imported goods under the Agreement. Goods are considered to be a product of a Party to the Agreement if: (1) they are wholly obtained or produced in the territory of either or both Parties; or (2) they have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification (under the Harmonized System) as described in Annex 301.2 or to such other requirements set forth in that annex. Goods are not considered to have originated in the other Party as a result of: (1) simple packaging or combining operations; (2) mere dilution; or (3) any process undertaken for the sole purpose of circumventing the rules of origin. Accessories, spare parts or tools delivered with an article as part of its standard equipment shall be deemed to have the same origin as that article.	In general, goods are considered to be a product of a particular country if they are either wholly the growth, product or manufacture of such country or if they have been "substantially transformed" in such country. The term "substantially transformed" is not statutorily defined, but rather has been the subject of widely varying court interpretations over the last several years.	Rules of Origin (sec. 202) The rules of origin set forth in Articles 301, 302, 304, and Annex 301.2 (Interpretation) are enacted as statutory provisions in the implementing bill. These rules of origin are for purposes of implementing the tariff treatment under the Agreement. These rules will also be used for provisions of the Agreement applying to goods originating in Canada (e.g., special tariff provisions for fresh fruits and vegetables, the Meat Import Act, and bilateral emergency relief). The existing "substantial transformation" rule of origin would continue to apply to import and export restrictions (Article 407 of the Agreement). Authorizes the President to proclaim, enacted as part of the Harmonized System, the Annex 301.2 Rules, which detail changes in HS classifications generally necessary after processing for articles to be considered as originating in Canada. Two technical changes are made in the rules reflecting corrections since conclusion of the Agreement on January 2, 1988.
Annex 301.2. Interpretation and Rules Sets forth in detail the changes in tariff classifications under the Harmonized System which are generally necessary after processing within a Party for articles to be considered to have originated in that Party and establishes other rules of interpretation for determining the origin of articles under the Agreement.		

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Provides that apparel made from fabric woven in the United States or Canada will be duty-free but apparel made from imported fabric will qualify for FTA treatment only up to the following levels: (in millions sq. yd. equivalents) Imports from Canada: Non-woolen 50, Woolen 6 Imports from U.S.: Non-woolen 10.5, Woolen 1.1 Nonwoven fabric and made-up textile articles, woven or knitted in Canada from yarn produced or obtained in a third country, will qualify for FTA treatment for 3 years, but only up to an annual level of 30 million square yards.		Special Provision Regarding Application of Rules of Origin to Certain Apparel (sec. 202(f)) Authorizes the Secretary of Commerce to issue regulations to govern the export to Canada of apparel products subject to the tariff rate quota provision.
Article 302. Transshipment Provides that goods that are further processed in a third country before being shipped to their final destination will not qualify for FTA treatment.		The statement of administrative action describes the rule of origin provisions that will ensure that only goods originating in Canada, or products of Canada as a result of substantial transformation, will be eligible to receive preferential tariff treatment and other benefits of the Agreement in the United States (including under the Meat Import Act and section 22), and that third country goods merely transshipped through Canada or insufficiently transformed in Canada will not qualify.
Article 303. Consultation and Revision Requires the Parties to consult regularly to ensure that the rules of origin are operating effectively and to consider changes to the rules as necessary.		Any modifications to the basic rule of origin principles which may be agreed to with Canada must be implemented by legislation (the "fast track" procedure applies for 30 months). The President may proclaim changes in the detailed classifications under Annex 301.2 Rules agreed with Canada, subject to the consultation/layover provisions.
Article 304. Definitions Defines several of the terms used in the chapter.		
Chapter 4. Border Measures		
Article 401. Tariff Elimination Neither Party shall increase any existing customs duty or introduce any customs duty on goods originating in the territory of the other party, except as provided in the Agreement. Each Party will eliminate tariffs on all products in bilateral trade within 10	All U.S. imports from Canada are subject to MFN rates of duty except for imports of motor vehicles and original equipment parts covered by the U.S.-Canadian Automotive Agreement implemented in 1966. There is no existing authority for the President to proclaim the tariff modifications under the Agreement.	Tariff Modifications (sec. 201) The President may proclaim such modifications or continuance of any existing duty or duty-free or excise treatment, or such additional duties, as he determines to be necessary or appropriate to carry out the schedule of duty reductions with Canada under the Agreement. The proclamation authority includes a technical correction

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years (by January 1, 1998), phased out under three staging categories as provided in Annexes 401.2, 401.6, and 401.7: 1. Immediate elimination of some duties upon entry into force of Agreement (January 1, 1989). 2. Elimination of some duties in 5 equal cuts of 20 percent per year (by January 1, 1993). 3. Elimination of duties on import-sensitive articles in 10 equal cuts of 10 percent per year over 10 years (by January 1, 1998). (In nearly all cases staging on a particular product is the same in both countries.) At the request of either Party, the Parties shall consult to consider accelerated elimination of the duty on specific items; any agreement on accelerated implementation would supersede the implementation schedule now in the Agreement. Annexes 401.2, 401.6, 401.7. U.S. and Canada Schedules; Machinery and Equipment; Treatment of Concessionary Duty Provisions Annex 401.2 sets forth the U.S. and Canadian tariff schedules, indicating for each tariff provision the existing rate of duty and staging schedule. Annexes 401.6 and 401.7 deal with base rates for a limited list of U.S. and Canadian tariff items currently subject to temporary duty concessions. Article 402. Rounding of Interim Rates With limited exceptions, rates shall be rounded down to the nearest 0.1 percent or cent to simplify interim staged rates; no rates will be rounded up.		in the application of customs duties to exports to Canada covered by temporary importation bonds. The President may also proclaim tariff modifications to maintain the general level of reciprocal and mutually advantageous concessions with Canada provided by the Agreement, including modified staging of duties initially proclaimed, subject to the consultation/layover requirements.
Article 403. Customs User Fees Requires the elimination of U.S. customs user fees on goods originating in Canada by January 1, 1994. Such user fees will be phased out by reducing the fee level otherwise applicable by 20 percent per year beginning on January 1, 1990.	With certain limited exceptions, a customs user fee of 0.17 percent ad valorem is applicable to all imported merchandise to cover the costs of customs processing.	Customs User Fees (sec. 203) Amends the Consolidated Omnibus Reconciliation Act of 1985 to provide that collection of user fees on products of Canada shall be in accordance with Article 403 of the Agreement. Directs that any customs services with regard to

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Neither country may introduce new customs user fees in the future.		imported goods which are exempt from this fee under this section, may not be funded by money contained in the Customs User Fee Account.
Article 404. Drawback Both countries are required to end duty drawback on exports to the other as of January 1, 1994, with limited exceptions. As an exception to the ban on duty drawback for bilateral trade, the following goods will continue to benefit from the program: -- goods remaining in the same condition on exportation as on importation (but they would not benefit from FTA tariff treatment), -- dutiable goods of the United States or Canada if they are incorporated into, or directly consumed in, the production of goods subsequently exported back to the FTA partner, and -- goods where both parties agree to maintain duty drawback (this category currently consists of (1) imported citrus products and (2) fabric imported from a third country and made into apparel that is subject to the most-favored-nation (MFN) tariff when exported to the other party).	U.S. duty drawback programs provide for the refund of duties paid on imported goods when such goods, or substituted domestic goods, are exported or incorporated in articles which are subsequently exported. Under certain circumstances, U.S. law allows for the non-payment of duties on imported articles placed into certain types of bonded manufacturing warehouses where the resulting articles are subsequently exported. Under current U.S. law, certain goods are entitled to duty-free entry under temporary importation bond pursuant to Schedule 8 of the TSUS.	Drawback (sec. 204) Amends sections 311, 312, 313 and 562 of the Tariff Act of 1930, as amended, to bring U.S. law into compliance with section 404 of the Agreement, including the exceptions for goods remaining in the same condition on exportation as on importation and for dutiable goods of the Parties incorporated into, or directly consumed in, the production of goods subsequently exported to the other Party. The President is authorized to proclaim, in accordance with the Harmonized System nomenclature, those citrus and apparel products that are exempt from the application of sections 404 of the Agreement. The President is also authorized to proclaim, but subject to the consultation/layover provisions, any future modifications in the application of Article 404 agreed to with Canada to: (1) delay beyond January 1, 1994, the effective date of the drawback prohibition with respect to any goods; or (2) exempt any additional goods.
Also, beginning January 1, 1994, goods withdrawn from a Foreign Trade Zone (FTZ) or benefiting from a similar program must be treated the same whether destined for consumption in the U.S. or Canada, i.e., duties must be paid.	Under the U.S. Foreign Trade Zone program, imported goods may enter an authorized foreign trade zone for manipulation or further manufacture without the payment of duties. When the finished goods are withdrawn from the zone for consumption in the United States, duties must be paid on the value of any foreign components at either the component or finished-good tariff rate. If the goods are exported and do not enter U.S. commerce, no duties must be paid.	Amends section 3(a) of the Foreign Trade Zones Act to bring the law into compliance with Article 404 of the Agreement. Duties will be collected prior to exportation to Canada to the same extent as if the product were entered for domestic consumption.
Article 405. Waiver of Customs Duties Precludes either Party from introducing new duty waiver programs or expanding existing waiver programs which are linked to performance requirements after the later of June 30, 1988, or the date of the approval of the Agreement and	The U.S. currently does not maintain any such duty remission programs.	

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requires the elimination of all such programs by January 1, 1998. The 1998 termination date excludes certain waivers under the Auto Pact, as specified in the section on automotive trade. The countries reserve existing rights under other agreements with respect to the Auto Pact or comparable arrangements. If a Party can show that a duty waiver to a specific firm granted on a commercial good hurts its commercial interests, then the Party granting this waiver must either make it generally available to any importer or end the program.		
Article 406. Customs Administration Requires Parties' respective Customs administrations to cooperate as specified in Annex 406.		
Annex 406. Sets forth the customs administration procedures agreed to in Article 406. Authorizes the Parties to require importers to submit a written declaration of origin based on a written declaration of origin provided by the exporter. It requires each country to make it unlawful for the exporter to provide a false certification. False declarations by either the importer or the exporter could be prosecuted by the government of the country in which the offending business is located.		Enforcement (sec. 205) Certification of origin: Requires persons who certify that goods exported to Canada meet the rules of origin criteria of the Agreement to provide, upon request by any customs official, a copy of such certification. Establishes a civil penalty of not greater than $10,000 for failure to provide such a certificate when requested. Makes it unlawful to make a false certification regarding the origin of goods subject to a civil penalty not to exceed the greater of the domestic value of the goods or $10,000.
Provides for cooperation on enforcement, consultations on uniform application of the rule of origin, review and appeal procedures for decisions on the rule of origin and consultations on major changes affecting customs administration.	Section 508 of the Tariff Act of 1930 sets forth the records that importers must keep for customs purposes.	Recordkeeping requirements Amends section 508 of the Tariff Act of 1930 to require any person who exports merchandise to Canada to maintain and render for examination and inspection such records which pertain to such exportations. Establishes a civil penalty of not greater than $10,000 for failure to retain such required records.

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		The statement of administrative action will state that the U.S. Customs Service presently has ample authority, and does not need any new statutory authority, to enforce the export certification requirements.
No provision in the Agreement.	Section 321(a) of the Tariff Act of 1930 authorizes the Secretary of the Treasury to disregard a difference of less than $10 between total estimated duties and taxes deposited or tentatively assessed and the total amount actually accruing.	Administrative Exemption (sec. 206) Amends section 321(a) of the Tariff Act of 1930 to waive the collection of duties and taxes on entries of merchandise from Canada that total $10 or less.
No provision in the Agreement.	The headnote to items 813.30 and 813.31 of the Tariff Schedules of the United States requires that U.S. residents returning from a foreign country must have been absent for at least 48 hours in order to receive the duty-free tourist allowance.	Personal Exemption for Returning Residents (sec. 208) Amends the Tariff Schedules of the United States to exempt returning U.S. residents from Canada from the required absence for at least 48 hours in order to receive the duty-free tourist allowance.
Article 407. Import and Export Restrictions Affirms Parties' GATT rights with respect to prohibitions or restrictions on bilateral trade in goods. Reaffirms that in all cases where quantitative restrictions are prohibited under the Agreement, use of minimum export prices and minimum import prices (except those used to enforce countervailing duty and antidumping orders) also are prohibited. Provides that where either country prohibits imports from a third country, it may similarly prohibit the pass-through of imports from that country through the FTA partner.		Steel Products (sec. 303(b)) Nothing in this Act precludes the discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements (VRAs) or mutually agreed quotas on U.S. imports of steel products from Canada. The statement of administrative action expresses the expectation of Congress that the USTR will continue to monitor imports of steel products from Canada to determine their impact on the U.S. steel industry and the President's steel program. It is expected that Canada will abide by its commitment not to take advantage of the VRA program currently in effect. Both countries should work to maintain an effective consultative mechanism to discuss and resolve any future problems, including surges in steel exports or diversions. These consultations will be based on Canada's exports of steel products to the United States in an effort to avoid disruption of the current steel program. Steel melted and poured: The statement of administrative action will state that there is not necessarily any conflict between section 1322 of H.R. 3 and the Agreement, since section 1322 provides discretionary authority

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		and, therefore, can be construed consistently with the Agreement. Section 1322 provides that any steel product manufactured in a country not party to a bilateral steel arrangement with the United States from steel melted and poured in a country that is a party may be treated as if it were a product of the arrangement country for purposes of quantitative restrictions. If the melted and poured provision were enacted into law and the President decided to exercise it with respect to Canada, the USTR, in advising the President, would pay attention, inter alia, to Canadian shipments of steel products made from imported semi-finished steel and of pipe and tube products fabricated from imported steel. Also, the Agreement does not present any new legal impediment to the application of section 1322. Since Article 407 of the Agreement merely reaffirms the Parties' existing rights under GATT Article XI, the legal issue under the Agreement is merely the same legal issue of consistency of section 1322 with the GATT currently.
The Parties agree to eliminate the restrictions set out in Annex 407.5 (Canadian embargo on used aircraft and U.S. embargo on lottery tickets maintained under GATT exceptions).	Section 305 of the Tariff Act of 1930 embargoes the importation of any lottery ticket, printed paper that may be used as a lottery ticket or advertisement for a U.S. lottery.	Exemption from Lottery Ticket Embargo (sec. 207) Amends section 305(a) of the 1930 Act to exempt, effective January 1, 1993, from the embargo on lottery tickets any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, printed in Canada for use in connection with a lottery conducted in the United States.
Annex 407.5. Elimination of Quantitative Restrictions Sets forth the Canadian and U.S. embargoes which both Parties agree to eliminate pursuant to Article 407. Canada agrees to eliminate, as of January 1, 1989, the embargo on used or secondhand aeroplanes and aircraft of all kinds. The United States agrees to eliminate, as of January 1, 1993, the embargo on any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement, for a U.S. lottery, printed in Canada.	See description for Article 407.	See description for Article 407.

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Article 408. Export Taxes Prohibits the imposition of export taxes on goods destined for the other Party unless the tax is also levied on goods for domestic consumption.	Export taxes are unconstitutional.	
Article 409. Other Export Measures Allows either Party to maintain or introduce a GATT permitted export restriction (such as in the event of a short supply emergency) only if: (a) the restriction does not reduce the proportion of the good that was exported to the other Party relative to the total supply of the good prior to the restriction; (b) the Party does not impose a higher price for the exported good than the price charged domestically; and (c) the restriction does not disrupt the normal channels of supply to the other Party or normal proportions among specific goods or categories of goods supplied to the other Party. In the implementation of this provision, the Parties pledge to cooperate in the maintenance and development of effective controls on the exports of each other's goods to third countries.		
Article 410. Definitions Defines a number of terms used in the chapter.		
Chapter 5. National Treatment		
Article 501. Incorporation of GATT Rule Each Party shall accord national treatment to the goods of the other Party in accordance with GATT Article III and its interpretative notes (i.e., internal measures such as taxes or regulatory requirements cannot discriminate in favor of domestic goods over imports from Canada and thereby replace the elimination of border measures).	The United States is currently obligated by GATT Article III to apply national treatment to goods of Canada.	

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Article 502. Provincial and State Measures Provinces or States must treat goods from the other Party no less favorably than the most favorable treatment that province or State provides goods of its own country (i.e., a province or State cannot discriminate against goods from the other country even if the province or State discriminates against goods from other provinces or States within its own country).		
Chapter 6. Technical Standards		
Article 601. Scope The provisions apply to technical standards related to goods other than agricultural, food, beverages, and certain related goods, which are covered separately. Processes and production methods are included (specifying how a product is made, as well as how it should perform, is a standards-related measure). The provisions do not apply to measures of a provincial or State government.		
Article 602. Affirmation of GATT Agreement The Parties reaffirm their rights and obligations under the GATT Agreement on Technical Barriers to Trade.	The United States is currently a signatory to the GATT Agreement on Technical Barriers to Trade (Product Standards Code) that permits technical regulations and standards to be used for legitimate public policy objectives (e.g., to protect human, animal, or plant life or health or to preserve the environment) but establishes principles and procedures for standards not to create unnecessary obstacles to trade.	
Article 603. No Disguised Barriers to Trade Neither Party shall maintain or introduce standards-related measures or procedures for product approval that would create unnecessary obstacles to trade between the Parties. Obstacles are not created if the demonstrable purpose of the measure is to achieve a legitimate domestic objective (as defined in the Agreement) but such measures must not exclude goods of the other Party that meet this objective.		

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Article 604. Compatibility To the greatest extent possible, and taking into account international standardization activities, each Party shall make its Federal standards-related measures and procedures for product approval compatible with those of the other Party, and promote harmonization of private standards.		
Article 605. Accreditation Each Party shall provide for recognition of the accreditation systems for testing facilities, inspection agencies, and certification bodies of the other Party. (Test labs accredited under the program operated by the National Bureau of Standards or by the Canadian Standards Association will automatically receive recognition in the other country.) Neither Party shall require as a condition for accreditation that testing facilities, inspection agencies, or certification bodies be located, established, or make decisions within its territory. (These provisions assure nondiscriminatory treatment; all testing labs are not required to receive accreditation, particularly if not qualified, but discrimination cannot be based on nationality.)		
Article 606. Acceptance of Test Data Each Party shall provide, upon request, a written explanation whenever any of its Federal government bodies is unable to accept test results from bodies in the other Party needed to obtain certification or product approval.		
Article 607. Information Exchange Each Party will provide enhanced transparency in the regulatory process by providing the other party full texts of proposed Federal standards-related measures and product approval procedures published in official journals in time to provide a minimum 60-day advance comment period, except in urgent circumstances. Where reasonable, similar efforts will be made for proposed State, provincial, and private standards-related measures.		

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Article 608. Further Implementation The Parties shall undertake additional negotiations as appropriate on compatibility, accreditation, and acceptance of test data.		
Article 609. Definitions Various terms used in the Chapter are defined.		
Chapter 7. Agriculture		
Article 701. Agricultural Subsidies Identifies primary goal with respect to agricultural subsidies to be to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade. Prohibits either Party from introducing or maintaining any export subsidy on any of its agricultural exports to the other Party. Requires each Party to take into account the export interests of the other Party in the use of any export subsidy on agricultural exports to third countries. Prohibits either Party or public entities (such as the Canadian Wheat Board) from selling agricultural goods for export to the other Party at a price below the acquisition price of the goods plus any storage, handling or other costs incurred. Requires Canada to exclude from the transport rates established under the Western Grain Transportation Act any agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States.		
Article 702. Special Provisions for Fresh Fruits and Vegetables For a period of 20 years, each Party has the right to apply a temporary duty on specified fresh fruits or vegetables imported from the other Party when (1) the import price for such fruit or vegetable, for each of 5 consecutive working days, falls below 90 percent of the average monthly import price for the previous 5 years (dropping the high and low years) and (2) the planted acreage in		Special Tariff Provisions for Fresh Fruits and Vegetables (sec. 301(a)) Authorizes the Secretary of Agriculture to recommend to the President that a temporary duty be imposed on imports of a fresh fruit or vegetable from Canada, if the Secretary determines that (1) for each of 5 consecutive working days the import price of the fresh fruit or vegetable from Canada is below 90 percent of the corresponding 5-year average monthly import price, and (2) the planted acreage

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the importing Party for such fruit or vegetable does not exceed the average acreage for the preceding 5 years (dropping the high and low years).	—	in the U.S. for the fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. In determining whether to recommend imposition of a temporary duty, the Secretary shall consider whether the above 2 conditions have led to a distortion in U.S.-Canada trade in the fruit or vegetable, and if so, whether imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.
Any temporary duty imposed under this Article, together with any other duty in effect for that fruit or vegetable, shall not exceed the relevant MFN rate of duty, and may be applied on either a regional or national basis.		Within 7 days of receiving the Secretary's recommendation, the President shall determine whether to accept that recommendation after taking into account the national economic interests of the United States, and if so, shall proclaim the temporary duty.
Any temporary duty shall only be applied once per 12-month period, must be removed when the relevant price for the imported fruit or vegetable for 5 consecutive working days exceeds 90 percent of the relevant average monthly import price, but in any case must be removed after 180 days.		Any temporary duty, together with any other duty in effect, shall not exceed the lesser of: (1) the column one duty in effect prior to January 1, 1989, or (2) the column one duty in effect at the time the temporary duty is applied. No temporary duty shall apply to shipments in transit on the first day that the duty is effective.
Requires two working days notice and an opportunity to consult prior to application of any temporary duty.		Any temporary duty shall cease to apply when (1) the Secretary of Agriculture determinas that, for each of 5 consecutive working days, the Canadian point of shipment price exceeds 90 percent of the corresponding 5-year average monthly import price; or (2) 180 days have lapsed.
No temporary duty shall apply to shipments in transit on the first day that the duty is effective.—		No temporary duty may be applied pursuant to this section during the same time as any import relief under section 203 of the Trade Act of 1974 is in effect with respect to such fruit or vegetable.
No temporary duty may be applied during the same time as any import relief under Chapter 11 is in effect with respect to such fruit or vegetable.		The Secretary of Agriculture is authorized to issue regulations to implement these provisions. These provisions expire 20 years after the Agreement enters into force.
		To assist the Secretary of Agriculture in carrying out this provision, the Commissioner of Customs and the Director, Bureau of the Census shall cooperate to provide the Secretary with timely information and data relating to the importation of Canadian fruits and vegetables.

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		The statement of administrative action will spell out the details of the information and data to be supplied.
Article 703. Market Access for Agriculture In order to facilitate trade in agricultural goods, the Parties shall work together to improve access to each other's markets through the elimination or reduction of import barriers.		
Article 704. Market Access for Meat Prohibits either Party from introducing, maintaining, or seeking any quantitative import restriction or equivalent measure on meat imports from the other Party, unless otherwise allowed under the Agreement. If a Party imposes any quantitative import restriction on meat from all third countries, or negotiates agreement limiting exports from third countries, and if the other Party does not take equivalent action, then the first Party may impose quantitative restrictions on meat imports from the other Party only to the extent and only for such period of time as is sufficient to prevent frustration of the action restricting meat imports from third countries. Requires the Party contemplating restrictions against the other Party to notify the other Party and provide an opportunity to consult prior to taking action.	The Meat Import Act of 1979 requires the imposition of quotas on imports of beef, veal, mutton and goat meat at a level fixed by a statutory formula (statutory base of 1,204,000,000 pounds adjusted by a countercyclical formula) when the aggregate quantity of such imports on an annual basis is expected to exceed 110 percent of that adjusted base quantity level. However, quotas cannot be below 1,250,000,000 pounds. The President may suspend or raise quotas based on overriding national economic or security interests, inadequate domestic supplies at reasonable prices, or trade agreements implementing the policy. It has been U.S. practice to negotiate VRAs with one or more supplying countries if necesary to avoid triggering unilateral quotas.	Meat Import Act of 1979 (sec. 301(b)) Amends the Meat Import Act of 1979 to remove Canadian meat from the formula calculations and to adjust the trigger level and the minimum import level accordingly. Exempts meat articles originating in Canada from any import limitations, except that the President may by proclamation limit Canadian meat articles to the extent and for such period of time as he determines is sufficient to prevent frustration of any import limitations imposed under the Meat Import Act or by agreements on imports from third countries and if Canada has not taken equivalent action, subject to the original minimum original import level.
Article 705. Market Access for Grain and Grain Products Requires Canada to eliminate any import permit requirements for U.S. wheat and wheat products, for U.S. oats and oat products, or for U.S. barley and barley products, when the level of U.S. government support for wheat, oats, or barley becomes equal to or less than the level of Canadian government support for such grain. Authorizes certain exceptions for end-use certificates, denature requirements, or seed use certificates. Identifies the method for calculating the level of government support in a separate annex (Annex 705.4).	Section 22 of the Agricultural Adjustment Act of 1933 authorizes the President to impose import fees or quantitative restrictions on any article as he determines necessary so that imports of the article will not render or tend to render ineffective, or materially interfere with, an agricultural support program.	Agricultural Adjustment Act (sec. 301(c)) Amends section 22(f) of the Agricultural Adjustment Act to authorize the President, pursuant to Article 705 of the Agreement, to exempt products of Canada from import restrictions imposed under that section. The statement of administrative action sets forth the relationship between section 22 and Article 705 and interprets various terms used in Articles 705 and 701. Crow's Nest Subsidies (sec.) Requires the President to consult immediately with Canada to exclude from the

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Retains the right, to the extent consistent with other provisions of this Agreement, for each Party to impose quantitative import restrictions or import fees on imports of wheat, oats, barley, rye, corn, triticale or sorghum or products containing such grain, if such imports from other Party increase significantly as a result of a substantial change in either Party's support programs for that grain.		transport rates established under the Western Grain Transportaion Act agricultural goods originating in Canada and shipped via eastern ports for consumption in the United States (Article 701.5 excludes western ports).
Article 706. Market Access for Poultry and Eggs If Canada maintains or introduces quantitative import restrictions on chicken and chicken products, turkey and turkey products, or eggs and egg products, then Canada is required to permit global imports of such products at specified minimum levels: (a) chicken and chicken products -- global import quota at no less than 7.5 percent of Canadian domestic production; (b) turkey and turkey products -- global import quota at no less than 3.5 percent of Canadian domestic production quota; and (c) eggs and egg products -- global import quota at no less than 1.647 percent of domestic shell egg production for shell eggs; 0.714 percent for frozen, liquid and further processed eggs; and 0.627 percent for powdered eggs.		The statement of administrative action makes clear that Article 706 is a useful liberalization of Canadian import quotas, but the Agreement itself recognizes that it represents a beginning rather than conclusion of trade liberalization in a number of areas. Article 703 requires the Parties to further improve bilateral agricultural market access. The Administration fully intends to use its mandate for further negotiations to seek to eliminate remaining agricultural import barriers as a high priority, particularly where an unfavorable imbalance in market opportunities remains after the Agreement enters into force.
Article 707. Market Access for Sugar-Containing Products Prohibits the U.S. from introducing or maintaining any import restriction or import fee on Canadian goods containing 10 percent or less sugar by dry weight, for purposes of restricting the sugar content of such good.	Section 22 of the Agricultural Adjustment Act of 1933 authorizes the President to impose import fees or quantitative restrictions on any article as he determines necessary so that imports of the article will not render or tend to render ineffective, or materially interferee with, an agricultural support program.	Agricultural Adjustment Act (sec. 301(c)) Amends section 22(f) of the Agricultural Adjustment Act to authorize the President, pursuant to Article 707 of the Agreement, to exempt products of Canada from import restrictions imposed under that section.
Article 708. Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods Establishes general principles on the harmonization and equivalency of technical regulations and standards with respect to trade in agricultural, food,		[Importation of Animal Vaccines; Importation of Seeds; Plant and Animal Health Regulations (sec. 301(d), (e), (f))--amendments to various agricultural statutes to implement Article 708.]

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beverage and certain related goods. Annex 708.1 contains 12 schedules which elaborate on specific goals and guidelines for 12 different subject areas. Establishes a joint monitoring committee and 8 working groups (each on a different subject area), with representation from each Party, to facilitate and monitor the implementation of this Article and relevant Schedules. Article 709. Consultations The Parties shall consult on agricultural issues semi-annually and at such other times as they may agree. Article 710. International Obligations Unless otherwise specifically provided in this Chapter, the Parties retain their rights and obligations with respect to agricultural, food, beverage and certain related goods under the GATT and related agreements, including rights and obligations under GATT Article XI. Article 711. Definitions Provides definitions for the following terms: "agricultural goods", "agricultural, food, beverage and certain related goods", "animal", "equivalent", "export subsidy", "harmonization", "import fee", "import price", "meat goods", "standard", "sugar", "technical regulation", "technical specification".		
Chapter 8. Wine and Distilled Spirits Article 801. Coverage Applies generally to any measure related to the internal sale and distribution of wine and distilled spirits.	Pursuant to the 21st Amendment to the Constitution, which repealed the 18th Amendment's prohibition on alcoholic beverages, the regulation and control of the sale and distribution of alcoholic beverages was explicitly left to the States. The Constitution does not permit, however, any State to discriminate in their regulation of alcoholic beverages between the products produced within that State and those produced in other States or countries.	

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Article 802. Listing Listing measures (limits on brands or types of products that may be sold) must no longer discriminate against wine or distilled spirits of the other country. The lone exception to this requirement is that the province of British Columbia may continue to grant automatic listing to certain estate wineries, provided that listing measures do not otherwise discriminate. Criteria for decisions on listings must be based on normal commercial considerations and listing measures cannot be used to create disguised trade restrictions. Further, listing measures must include procedures for a fair and expeditious appeal when an application for a listing is denied.		
Article 803. Pricing The Agreement requires the elimination of discriminatory pricing measures for wine and distilled spirits, including charging a higher markup for U.S. products than locally produced products. Any existing markups must be eliminated when the Agreement is implemented for distilled spirits and must be phased out by January 1, 1995 for wine (with half of the differential to be eliminated by January 1, 1990). Differential pricing measures may only be maintained if the differential between products of the two countries does not exceed the additional cost of service for imported products relative to domestic products. Any such cost of service differential will be subject to audit to ensure it reflects actual higher costs rather than arbitrary protection for local products.		
Article 804. Distribution Prohibits discrimination between Canadian and U.S. wine and distilled spirits in terms of the distribution system for these products. However, on-premise sales by a winery or distillery solely for items produced by them may continue. Private wine store outlets existing on October 4, 1987 in Ontario and British Columbia may continue to discriminate in favor of wine produced in those provinces, but distribution measures in those provinces must otherwise provide nondiscriminatory treatment. Quebec is also		

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allowed to continue to require that wine sold in grocery stores must be bottled in Quebec, as long as alternative outlets for U.S.-bottled wine are provided.		
Article 805. Blending Requirement Canada is required to eliminate any measures which require that distilled spirits imported in bulk must be blended with Canadian spirits in order to be sold in Canada.		
Article 806. Distinctive Products Solely for purposes of standards and labeling, Canada agrees to recognize Bourbon Whiskey as a distinctive product manufactured in the United States and the United States agrees to recognize Canadian Whiskey as a distinctive product of Canada.	The United States already recognizes Canadian Whiskey as a distinctive product of Canada.	
Article 807. International Obligations Unless otherwise specifically provided in this Chapter, retains Parties' rights and obligations under the GATT and agreements negotiated under the GATT.		
Article 808. Definitions Sets forth definitions of key terms used in the Chapter.		
Chapter 9. Energy		
Article 901. Scope The Chapter applies to measures related to energy goods (petroleum, natural gas, coal, electricity, uranium and other nuclear fuels) originating in the territory of either Party.		
Article 902. Import and Export Restrictions Affirms the Parties' rights and obligations under the GATT with respect to prohibitions or restrictions on imports and exports and explicitly affirms that the GATT prohibits minimum import price and minimum export price requirements. If a Party imposes a restriction on importation from or exportation to a third country, it may prohibit the importation of such good through the other		The statement of administrative action (to be complemented by Committee report language) points out that if a restriction were adopted on third country energy trade, it could prove necessary for consultations to reach an expeditious conclusion in order to minimize adverse effects on U.S.-Canada trade. For example, if oil import fees apply only to third countries, increased oil would be diverted from the other Party into the country imposing the fee. To avoid shortages and higher prices in the exporting country and an artificially created competitive

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Party and may require as a condition of export of such energy good to the other Party that it be consumed within the territory of that Party. In the event that a restriction on imports from a third country is imposed by a Party, the parties agree to consult to minimize the impact on the other Party.		advantage for domestic suppliers in the importing country, it would be essential to arrive promptly at some mechanism to avoid distortions and protect and enhance competition. The Administration would seek a mutually satisfactory solution within 60 days. If the Parties could not reach a solution, unilateral action could be taken by either Party, subject to dispute settlement under Chapter 18 if the other Party believed the actions to be inconsistent with the Agreement.
The Parties agree to implement the provisions of Annex 902.5 making three specific changes to conform existing laws practices to these commitments.		
Annex 902.5 Lists three specific changes to conform existing laws/practices to the commitments set forth in Article 902: (1) The U.S. will exempt Canada from any potential restrictions on enrichment of foreign uranium which might be imposed under section 161(v) of the Atomic Energy Act; (2) Canada will exempt the U.S. from its requirements for domestic upgrading of uranium; and (3) the U.S. will allow Canada access to a maximum of 50 thousand barrels per day of Alaskan crude oil currently restricted from export under section 7(d) of the Export Administration Act, subject to the condition that this oil be transported to Canada from a suitable location in the Lower 48 States.	Although the United States presently does not restrict enrichment of foreign uranium, a Court of Appeals decision ordering it to do so pursuant to section 161(v) of the Atomic Energy Act is on appeal to the Supreme Court. Alaskan-produced crude oil transported via the Trans-Atlantic Pipeline cannot be exported without a joint resolution of Congress (very limited exceptions).	[Uranium (sec. 302(b)) Uranium of Canadian origin would be exempt from any restrictions that might be imposed under section 161(v) of the Atomic Energy Act.] [Alaskan Oil (sec. 302(a)) Amends section 7(d)(1) of the Export Administration Act of 1979 to permit exports of up to 50,000 barrels per day of Alaskan-produced crude oil to Canada, provided that any ocean transportation of such oil shall be by U.S. vessels.]
Article 903. Export Taxes Prohibits the imposition of an export tax on energy goods shipped to the other Party unless such tax is also applicable to such energy goods when destined for domestic consumption.		
Article 904. Other Export Measures Affirms that, as provided by the GATT, either country may restrict exports where necessary to respond to supply shortages, to maintain a domestic price stabilization program or to prevent exhaustion of a finite energy resource. However, it may impose a restriction only if the restriction (1) does not reduce the proportion of total supply of the specific energy good historically available to the		

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other country; (2) does not require disruption of the normal channels of supply or mix of specific energy products; and (3) does not impose a higher price on exports than for comparable domestic sales.		
Article 905. Regulatory and Other Measures		
Provides for consultation in the event either country believes the energy regulatory actions of the other country would directly discriminate against its energy goods or its persons.		
Requires the implementation of the provisions of Annex 905.2.		
Annex 905.2		
Lists regulatory changes to be made to conform to the Agreement. Canada agrees to eliminate its electricity export price test that requires the export price to be not significantly less than the least-cost alternative available to the importer. Other Canadian export tests ("surplus" tests) are required to be administered in a manner consistent with the principles of the Agreement.		
The U.S. agrees to eliminate any discriminatory treatment of British Columbia Hydro vis-a-vis comparably situated U.S. utilities in terms of access to the Bonneville Power Administration Intertie into the California electricity market. Bonneville and B.C. Hydro are exhorted to negotiate long-term arrangements to assure the development of electricity trade in a mutually beneficial manner consistent with the objectives of the Agreement.		
Article 906. Government Incentives for Energy Resources Development		
Allows existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.		

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Article 907. National Security Measures Limits the situations in which either Party can restrict imports of an energy good from or exports of an energy good to the other Party on the basis of national security. Such restrictions are permissible only to the extent necessary to: (a) supply a military establishment of a Party or a critical defense contract; (b) respond to the Party's armed conflict situation; (c) implement national policies or international agreements relating to nuclear non-proliferation; or (d) respond to direct threats of disruption in the supply of nuclear materials for defense purposes.		
Article 908. International Obligations Declares that no inconsistency is intended between this Agreement and the obligations of either country under the International Energy Program (IEP) of the International Energy Agency. In the event of an unavoidable inconsistency between the two, the provisions of the IEP shall prevail.		
Article 909. Definitions Defines a number of terms used in the chapter.		
Chapter 10. Trade in Automotive Goods		
Article 1001. Existing Arrangement Commits Parties to administer the Automotive Pact in the best interests of employment and production in both countries.	Both countries are party to the Auto Pact. Under the Auto Pact the United States grants duty-free treatment to automotive products of Canadian origin. Canada grants duty-free status to automotive products, regardless of origin when imported by a Canadian automotive manufacturer which meets Canadian production requirements.	
Article 1002. Waiver of Customs Duties Requires Canada's export-based duty remission program to be eliminated January 1, 1989 on exports to the United States and terminated in all cases by January 1, 1998. (The export-based duty		

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remission program allows firms in Canada to reduce duties on motor vehicle and part imports in proportion to the Canadian value-added in their exports of automotive parts). Requires the elimination of Canada's production-based duty remissions by January 1, 1996 or earlier as contracts expire. (Production-based duty remissions allow firms that are not members of the Auto Pact in Canada to avoid duties on automotive imports into Canada as long as they meet Canadian local content requirements.) Provides that there will be no new recipients of any Canadian automotive duty remission benefits, and current benefits will not be enhanced. Whenever it is demonstrated that a waiver or combination of waivers with respect to automotive goods adversely affects the commercial interests of a person of the other Party or the other Party's economy, the Party granting the waiver either shall cease to grant it or shall make it generally available to any importer. Annex 1002.1 Sets forth the names of the companies qualifying for waivers of customs duties pursuant to Article 1002. Article 1003. Import Restrictions Canada agrees to phase out its embargo on the importation of used vehicles over five years. Article 1004. Select Panel Provides for the establishment of a select panel to assess the state of the North American industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets.		Exercise of GATT Rights Regarding Production-Based Duty Remission Program (sec. 209) The U.S. Trade Representative (USTR) shall (1) undertake a study to determine whether the Canadian production-based duty remission program is inconsistent with, or otherwise denies U.S. benefits under, the GATT, and (2) determine whether to initiate a section 301 investigation. The USTR must report to Congress by June 30, 1989 (by September 30, 1989, if an extension is necessary) on the results of the study and on the determination whether to initiate an investigation. The statement of administrative action sets forth principal objectives the United States should seek to accomplish in negotiations with Canada on establishment of the select panel: (1) The two Governments should agree on a schedule for establishment and operation of the panel, seeking to ensure overall results can be achieved by June 30, 1990 (rule of origin by June 30, 1989); (2) The panel should be composed of "informed persons" who reflect and represent relevant interests;

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		(3) The panel should review any issue the United States considers relevant and helpful to its mission (issues to be considered by the Administration are listed). The Administration shall keep the Congress informed on a continuing basis of the panel's progress and any significant developments, and the USTR will promptly submit panel proposals and recommendations and advise the Congress of Administration proposed action.
Article 1005. Relationship to Other Chapters Provides that the FTA rules of origin (chapter 3) will apply to all U.S. imports of Canadian automotive products, but only to Canadian imports of U.S. automotive products not entering Canada under the Auto Pact. In calculating the domestic content for determining the origin of a vehicle, the manufacturer may elect to average its calculation over a 12-month period on the same class of vehicles or sister vehicles assembled in the same plant as an alternative to a calculation for each vehicle.	Imports of Canadian automotive products into the United States under the Auto Pact are governed by a rule of origin in which 50 percent of invoice price (including overhead and other indirect costs in addition to direct costs of production) must be incurred in the United States or Canada.	The rules of origin provide that all imports of vehicles into the United States from Canada to qualify for duty-free status must meet the Agreement rule of origin, i.e., 50 percent of direct production costs incurred in the United States or Canada. The Customs Service is to issue regulations governing administration of alternative averaging rules with respect to vehicles of same class or sister vehicles assembled in the same plant. Auto Products (sec. 202(e)) Authorizes the President to enter into negotiations with Canada to seek to conclude an agreement by January 1, 1990, to increase from 50 percent to not more than 60 percent the domestic content requirement for determining the rule of origin on auto products. The President may proclaim the agreed increase in content requirement. Also authorizes the President to proclaim changes in the HS to the definition of Canadian articles for purposes of the Auto Pact to conform to Chapter 3 of the Agreement.
Article 1006. Definitions Defines a number of terms used in the Chapter.		
Chapter 11. Emergency Action		
Article 1101. Bilateral Actions Authorizes the United States or Canada to take emergency action against imports	Section 403 of the Trade and Tariff Act of 1984 authorizes the President to suspend by proclamation the reduction or elimination of any duty provided under	Import Relief (sec. 303(a)) Requires the International Trade Commission (ITC), at any time that it makes an

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from the other Party during the transition period if, as a result of the reduction or elimination of a duty provided for under the Agreement, the goods are being imported in such increased quantities, in absolute terms, and under such conditions so that the imports from the exporting country alone constitute a substantial cause of serious injury to a domestic industry.	the U.S.-Israel Free Trade Area Agreement and proclaim a duty rate as an import relief or national security (section 232) action. Any ITC report to the President regarding an import relief investigation must state whether its findings and recommendations apply to imports from Israel.	affirmative injury finding under the import relief provisions of the Trade Act of 1974 (or is equally divided), to investigate and report to the President on whether, as a result of a reduction or elimination of a duty provided for under the Agreement, an article originating in Canada is being imported into the United States during the transition period under the Agreement in such increased quantities in absolute terms and under such conditions, so that such imports from Canada alone constitute a substantial cause of the serious injury or threat thereof.
The emergency action authorized to be taken is either suspension of any duty reduction or an increased duty not to exceed the most-favored-nation rate.		The President may take the action authorized under Article 1101 of the Agreement (suspension of a duty reduction or a tariff "snapback" up to the MFN rate).
Requires notification and consultation prior to the emergency action; action against any particular product may be taken only once during the transition period and may not last for more than 3 years.		
No emergency action may be taken after, or last beyond, the expiration of the transition period without the consent of the other Party.		
The Party taking emergency action must provide mutually-agreed-upon compensation to the other Party, or else the exporting Party may retaliate.	Section 123 of the Trade Act of 1974 authorizes the President to enter into trade agreements for the purpose of providing compensation for import relief actions taken under section 203.	
Article 1102. Global Actions		Import Relief (sec. 303(a))
With respect to any global action taken by the United States or Canada pursuant to GATT Article XIX, imports from the other Party shall be excluded from the global action unless such imports are substantial and are contributing importantly to the serious injury or threat thereof caused by imports. For purposes of this Article, imports in the range of 5-10 percent or less of total imports would normally not be considered substantial.	Sections 201-203 of the Trade Act of 1974 authorizes the President to provide import relief after receiving a report from the ITC that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry. The ITC investigation is with respect to imports from all sources.	Requires the ITC, at any time that it makes an affirmative injury finding under the import relief provisions of the Trade Act of 1974 (or is equally divided), to investigate and report to the President on whether imports from Canada are substantial and are contributing importantly to such serious injury or threat thereof. In determining whether imports from Canada are substantial, the ITC shall not normally consider imports from Canada in the range of 5-10 percent or less of total imports of such article to be substantial. The term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury caused by imports.
If emergency global action is taken which excludes the other Party, the Party taking action may subsequently include the other Party in the event of a surge in imports from such Party that undermines the effectiveness of the global action.	Import relief may take the form of a tariff, tariff-rate quota, quantitative restriction, orderly marketing agreement, or any combination thereof. Any tariff increase may not exceed 50 percent above the existing rate; any quantitative restriction must permit the importation of a quantity or value of the article at the level imported during the most recent period which the President determines is a representative period.	The President shall exclude imports from Canada from the relief to the extent required under Article 1102 of the Agreement.
Requires notice and consultation; any emergency action must not have the effect		

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of restricting imports from the other Party below the trend of imports over a reasonable recent base period with allowance for growth.	Import relief under section 203 is generally provided on a global, MFN basis, although it is not so required (section 203(k)(1) provides that the President may take action without regard to the nondiscriminatory provisions of section 126(a), but only after consideration of U.S. international obligations). Import relief may not exceed 5 years, except that it may be extended for one period not to exceed 3 years. At least 2 years must lapse before a subsequent investigation of an article which has been the subject of import relief.	If the President determines to exclude imports of an article from Canada from import relief, and he thereafter determines that a surge in imports from Canada of such article undermines the effectiveness of the import relief, the President may apply import relief with respect to the article from Canada.
The Party taking emergency action must provide mutually-agreed-upon compensation to the other Party, or else the exporting Party may retaliate.	Section 123 of the Trade Act of 1974 authorizes the President to enter into trade agreements for the purpose of providing compensation for import relief actions taken under section 203.	
Article 1103. Arbitration		
Articles 1806 (Arbitration) and 1807 (Panel Procedures) shall not apply with respect to proposed actions under this Chapter. Any dispute with respect to actual actions not resolved by consultations shall be referred to arbitration under Article 1806.		
Article 1104. Definitions		
"Contribute importantly" means an important cause, but not necessarily the most important cause, of serious injury from imports.		
"Emergency action" means any emergency action taken after entry into force of this Agreement.		
"Surge" means a significant increase in imports over the trend for a reasonable recent base period for which data are available		
Chapter 12. Exceptions for Trade in Goods		
Article 1201. GATT Exceptions		
The provisions of GATT Article XX allowing exceptions to GATT rules for limited reasons (e.g., to protect public health, morals, national treasures) are made part of this Agreement.		

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Article 1202. Protocol of Provisional Application Any measure exempt from GATT obligations under the Protocol of Provisional Application shall also be exempt from the Agreement obligations.		
Article 1203. Miscellaneous Exceptions Certain other specific measures are exempt from the Agreement, i.e., U.S. and Canadian export controls on logs, and existing Canadian East Coast export controls on unprocessed fish.		
Article 1204. Beer and Malt Containing Beverages The provisions of the Agreement regarding national treatment do not apply to measures existing as of October 1, 1987 (or their renewal) related to the internal sale and distribution of beer and malt containing beverages.		
Article 1205. GATT Rights The Parties retain their GATT rights and obligations with respect to the matters exempted under Articles 1203 and 1204.		
Chapter 13. Government Procurement		
Articles 1301-1309 The GATT Government Procurement Code, as modified or supplemented by the Agreement is incorporated into the Agreement. "Buy American" and "Buy Canadian" restrictions are eliminated on the procurement of goods by U.S. and Canadian entities covered by the GATT Code between the Code threshold (for 1987, $171,000) and an Agreement threshold of $25,000, and are subject to the same exclusions and exceptions as those covered by the Code. Under the Agreement, suppliers of goods which are manufactured in the United States and Canada and which contain at least 50 percent U.S. or Canadian content will be treated on an equal basis to the most favorable treatment of suppliers of domestic goods for covered procurements.	Title III of the Trade Agreements Act of 1979 authorizes the President to waive Buy American Act and other restrictions on government procurement purchases of eligible products covered by the GATT Government Procurement Code from other Code signatories on a reciprocal basis, including Canada. The Code and waiver authority do not apply to contracts valued below the threshold of 130,000 SDRs ($171,000 in 1987). The threshold was lowered under the U.S.-Israel Free Trade Agreement implementing legislation to $50,000 on bilateral procurement covered by the Code.	Amends section 308(4) of the Trade Agreements Act of 1979 to lower the threshold on products or services of Canada, for purposes of waiving U.S. Buy American government procurement restrictions on purchases covered by the Code, to a contract value of $25,000 or more, except as otherwise agreed by the United States and Canada under Article 1304, paragraph 3, of the Agreement with respect to future coverage of the Code.

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The Parties shall actively strive to achieve as quickly as possible, multilateral liberalization of international government procurement policies, and shall undertake bilateral negotiations to improve and expand the government procurement provisions no later than one year after conclusion of the multilateral negotiations.		
Each government must provide transparency in its procurement process. Public notice must be provided of all the criteria it intends to use in evaluating a bid (including offsets) and the award must be based on those criteria. Principles are also established for bid challenge procedures for all potential suppliers. The Parties shall collect and exchange annual statistics on covered procurements.	The United States already provides effective bid challenge procedures.	
Annex 1304.3. Entities Covered		
Annex 1304.3 sets forth the list of U.S. and Canadian government procurement entities currently subject to the GATT Code and covered by the Agreement.		
Annex 1305.3. Principles Guiding Bid Challenge Procedures		
Annex 1305.3 sets forth the elements of the bid challenge procedures that the Parties must maintain for procurements covered by the Agreement.		
Chapter 14. Services		
Article 1401. Scope and Coverage		
The Agreement applies to any measure by a Party related to the provision of a covered service by a person of the other Party within or into the Party. Provision of a covered service includes production, distribution, sale, marketing and delivery, and purchase and use; access to, and use of, domestic distribution systems; establishment of a commercial presence (other than investment) for distribution, marketing, delivery; and any investment (subject to the Agreement investment provisions) for provision of a covered service. A wide range of services is covered, but not transportation services.		

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Annex 1408. Services Covered by This Chapter Annex 1408 lists the types of services covered by this Chapter.		
Article 1402. Rights and Obligations Each Party must treat, with respect to future covered measures services supplied by the other Party no less favorably than its own service suppliers (including no less favorable treatment by a province or State than that province or State accords its own suppliers) unless the difference in treatment is no greater than necessary and equivalent in effect to treatment of its own suppliers for prudential, fiduciary, health and safety, or consumer protection reasons and prior notice is given. These rights and obligations do not apply to measures existing at the time of entry into force (including renewal). Existing measures can be amended or extended, but cannot be made more restrictive. Neither Party shall introduce any measure that constitutes arbitrary or unjustifiable discrimination between service providers of either Party. The provisions do not affect government procurement or subsidies of services.		
Article 1403. Licensing and Certification Each Party shall ensure that licensing and certification measures do not discriminatorily impair or restrain nationals of the other Party to licensing or certification.		
Article 1404. Sectoral Annexes These provisions also apply to the annexes on individual service sectors, unless otherwise provided.		
Annex 1404. Sectoral annexes on certain individual sectors clarify the application of the Agreement to architects, tourism, computer services, and telecommunications-network-based enhanced services.		

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Article 1405. Future Implementation The Parties shall endeavor to extend these obligations by negotiating and implementing modification and elimination of inconsistent existing measures and further sectoral annexes. The Parties shall periodically review and consult to include additional services and to increase market access.		
Article 1406. Denial of Benefits Subject to prior notice and consultation, a Party may deny these benefits to persons of the other Party if the Party establishes the service is indirectly provided by a third country supplier.		
Article 1407. Taxation These provisions do not apply to any new taxation measure that does not constitute a means of arbitrary or unjustifiable discrimination between service suppliers or a disguised restriction on services trade between the Parties.		
Article 1408. Definitions Various terms used in the Chapter are defined.		
Chapter 15. Temporary Entry for Business Persons The Agreement contains various provisions for the Parties, in their immigration laws and regulations, to provide transparent criteria and procedures to facilitate the temporary entry into each other's territory of business persons otherwise qualified for entry who conduct trade in goods and services or in investment activities.		[Immigration (sec. 305) On a reciprocal basis, a citizen of Canada, including spouse and children, if otherwise eligible for a visa and admissible into the United States, may be considered a nonimmigrant if entering temporarily as a business person; an amendment to the Immigration and Nationality Act authorizes admission of such persons under regulations of the Attorney General promulgated after consultations with the Secretaries of State and Labor.]
Chapter 16. Investment The Agreement sets out four basic rules to govern the treatment of investors from each Party: 1. National treatment and nondiscrimination. Each Party is to treat investors of the other party at least as favorably as its own investors in like	The United States maintains an open investment policy for Canada, with certain exceptions (e.g., U.S. laws restricting foreign investment in atomic energy and communications).	

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circumstances with respect to the establishment of new businesses, the acquisition of existing businesses, and the conduct, operation, and sale of business enterprises located in its territory. Neither Party can require that investors sell investments by reason of their nationality, or that their own nationals must hold a minimum level of equity in investments made by investors of the other country. 2. Elimination of performance requirements. Neither Party, as a term or condition on permitting an investment in its territory or when regulating an investment, may impose or enforce measures which require an investor to export a certain amount of goods, or substitute locally produced goods or services for imports, purchase or give a preference to locally produced goods or services, or achieve a certain domestic content. (This rule also applies to third country investors when such measures could significantly affect U.S.-Canadian trade.) 3. Expropriation only in accordance with international law standards. Neither Party may directly or indirectly nationalize or expropriate the holding of an investor of the other Party except in accordance with generally accepted international law standards (e.g., payment of prompt, adequate, and effective compensation at fair market value). 4. Free transfer. Neither Party shall prevent an investor from transferring profits, earnings, or sales and liquidation proceeds from an investment, with certain limited exceptions. These provisions apply to future, not existing measures, except existing measures may not be made more restrictive. These provisions also do not apply to financial services (except certain insurance measures) covered separately, government procurement, or provision of transportation services. The provisions also do not apply to any new taxation measure or any subsidy if it is not a means of arbitrary or unjustifiable discrimination between investors or a disguised restriction on investor benefits.		

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Amendments of the Investment Canada Act (Annex 1607.3) Canada's threshold for review of direct acquisitions by U.S. investors (currently $5 million) is phased up from C$25 million on date of entry into force to C$150 million (in constant 1992 Canadian dollars) after three years. Canada will phase up the threshold on review of indirect acquisitions from C$100 million on entry into force and no longer review indirect acquisitions after the end of three years. Canada also will apply these higher thresholds to an acquisition by a foreign investor when a U.S. investor seeks to sell its Canadian business. Canada will offer to buy, at a fair open market value, as determined by independent impartial assessment, any business enterprise in Canada in a cultural industry which Canada requires be divested when reviewing an indirect acquisition. Canada will also no longer impose certain performance requirements under the Investment Canada Act (i.e., to export, substitute local production for imports, source or purchase locally, or achieve specified domestic content).		
Chapter 17. Financial Services The Agreement covers all current and future laws, regulations, and practices relating to financial institutions in both countries. The United States agreed to guarantee the right of Canadian banks to retain their multi-state branches that were grandfathered under the International Banking Act of 1978. If the Glass-Steagall Act (which separates U.S. commercial and investment banking) is amended, the United States will extend these benefits to Canadian financial institutions in the United States. The United States also agreed to allow Canadian banks (as well as U.S. and other foreign banks) in the United States to underwrite and deal in debt obligations fully backed by Canada or its political subdivisions. Under this Agreement, U.S. commercial bank subsidiaries will be exempt from the	The Banking Act of 1933 permits national banks to deal in, underwrite, and purchase for its own account obligations of the United States and general obligations of States and political subdivisions.	[Financial Services (sec. 306) An amendment to section 16 of the Banking Act of 1933 provides that to the extent the national bank may deal in, underwrite, and purchase for its own account obligations backed by the United States or of any State or political subdivision, an association may deal in, underwrite, and purchase debt obligations backed to a comparable degree by Canada or its political subdivisions.]

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current Canadian restrictions on market share, asset growth, and capital expansion, in the same way that Canadian banks are free from these restraints, and will also be allowed to establish or acquire securities firms or federally-regulated Canadian insurance and trust companies in the same manner as Canadian banks. U.S. insurance firms will now receive the same rights as Canadian insurance companies to diversify in the financial sector. Under the Agreement, applications for entry by U.S. securities firms will be reviewed on a prudential basis, just as for Canadian firms, rather than on a reciprocity basis. U.S. securities firms established in Canada will have the ability to diversify through a holding company structure into other financial activities such as banking and insurance. The United States has agreed to continue current treatment provided Canadian financial institutions established in the United States as long as Canada continues to liberalize its financial markets and to extend the benefits to U.S. financial institutions established in Canada; Canada has made an analogous commitment. The Agreement establishes a formal consultative mechanism between the U.S. Department of the Treasury and the Canadian Department of Finance to oversee this liberalization and deal with any other financial services issues.		
Chapter 18. Institutional Provisions		
Article 1801. Application The provisions of this Chapter apply to dispute avoidance or settlement regarding interpretation or application of the Agreement or whenever a Party considers a measure would be inconsistent or cause nullification or impairment, except for financial services and antidumping or countervailing duty cases covered separately. Disputes arising under both the Agreement and the GATT may be settled in either forum at the discretion of the complainant, but once initiated that procedure shall be used to the exclusion of any other.	Section 301 of the Trade Act of 1974 requires USTR, at the time it initiates an investigation, to initiate consultations with the foreign government and dispute settlement proceedings under the GATT or other agreement, if applicable, to resolve an alleged unfair foreign trade practice that burdens or restricts U.S. commerce.	

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Article 1802. The Commission The Parties establish the Canada-U.S. Trade Commission to supervise Agreement implementation, resolve disputes, oversee further elaboration, and consider any other matter that may affect Agreement operation. The Commission may establish ad hoc or standing committees or working groups and seek non-governmental advice. The principal representative of each Party shall be the cabinet officer or Minister primarily responsible for international trade, or their designees. The Commission shall convene at least once a year to review the functioning of the Agreement, held alternately in the two countries. All decisions shall be taken by consensus. Article 1803. Notification Each Party shall provide written notice to the other Party (in advance if possible) of any proposed or actual measure it considers might materially affect the operation of the Agreement, and provide information and respond to questions upon request. Article 1804. Consultations Either Party may request consultations regarding any actual or proposed measure or any other matter it considers affects the operation of the Agreement, whether or not notified. The Parties will make every effort to arrive at a mutually satisfactory resolution through consultations. Article 1805. Initiation of Procedures If the Parties fail to resolve a matter through consultations within 30 days of a request, either Party may request a meeting of the Commission. The Commission shall convene within 10 days, unless otherwise agreed, and endeavor to resolve the dispute promptly. The Commission may call on technical advisers or assistance of an acceptable mediator. Article 1806. Arbitration If a dispute referred to the Commission has not been resolved within 30 days, the		

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Commission shall refer a dispute regarding emergency action, and may refer any other dispute to binding arbitration. If a Party fails to implement the findings of a binding arbitration panel in timely fashion and the Parties cannot agree on appropriate compensation or remedial action, the other Party shall have the right to suspend application of equivalent benefits to the non-complying Party.		
Article 1807. Panel Procedures If a dispute referred to the Commission has not been resolved within 30 days or other agreed period or has not been referred to arbitration, the Commission shall establish a panel of experts to consider the matter, upon request of either Party. The Commission shall develop a roster of individuals to serve as panelists, who shall not be affiliated with or take instructions from either Party. Each panel shall consist of 5 members, at least 2 Canadian citizens and 2 U.S. citizens. Within 15 days after the panel is established each Party, in consultation with the other Party, shall choose 2 panelists and the Commission shall seek to agree on a fifth to chair. If a Party does not appoint its panelists within 15 days, they will be chosen by lot from the roster. If the Commission cannot agree on the fifth panelist within 15 days, the 4 appointed panelists will decide on the fifth within another 15 days or, if agreement is not possible, select the fifth by lot from the roster. The procedures shall assure the right to at least one hearing and an opportunity to provide written submissions and rebuttal arguments; proceedings shall be confidential. The panel shall present an initial report to the Parties within 3 months, unless otherwise agreed, containing findings of fact, its determination of whether the measure is or would be inconsistent with the Agreement or cause nullification and impairment, any recommendations for resolution, and, if requested, findings	Section 125 of the Trade Act of 1974 (termination and withdrawal authority) authorizes "self compensation" or retaliation to exercise U.S. rights or obligations under the GATT or other trade agreement. Section 301 authorizes retaliatory import restrictions on goods or services in response to a foreign unfair trade practice that burdens or restricts U.S. commerce. Section 123 of the Trade Act of 1974 authorizes compensation agreements only for import relief actions.	

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on the degree of adverse trade effect. Where feasible, Parties will have an opportunity to comment on the preliminary findings prior to completion of the report. Within 14 days after the initial report is issued, a disagreeing Party shall present its written objections to the Commission and the panel. The panel may request the views of both Parties and reconsider its report and issue a final report within 30 days. Upon receipt of the final report, the Commission shall agree on dispute resolution, which normally shall conform to the panel recommendation. Whenever possible, resolution shall be non-implementation or removal of a measure not conforming to the Agreement or causing nullification or impairment, or failing resolution, compensation. If the Commission does not agree on a mutually satisfactory resolution within 30 days and a Party considers its fundamental rights or benefits would be impaired by implementation or maintenance of the measure, the Party shall be free to suspend benefits of equivalent effect until the Parties have agreed on a resolution. Article 1808. Referrals of Matters from Judicial or Administrative Proceedings If an issue of interpretation of the Agreement arises in any domestic judicial or administrative proceeding which merits intervention, or if a court or administrative body solicits the views of a Party, the Parties shall seek to agree on the interpretation. If the Parties are unable to agree, either Party may submit its own views to the court or administrative body. **Chapter 19. Binational Panel Dispute Settlement in Anti-dumping (AD) and Countervailing Duty (CVD) Cases** Article 1901. General Provisions The provisions of Article 1904 (which replace judicial review of final AD/CVD determinations with binational panel review) apply only with respect to goods		Review Regarding Canadian Merchandise (sec. 401(c)) Provides that the administering authority (Commerce) determines whether a proceeding involves Canadian merchandise.

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which the competent investigating authority of the importing Party determines are goods of the other Party.		
Article 1902. Retention of Domestic Antidumping and Countervailing Duty Law Each Party reserves the right to apply its AD law and CVD law to goods imported from the other Party. AD law and CVD law include relevant statutes, legislative history, regulations, administrative practice, and judicial precedents. Each Party reserves the right to change or modify its AD law or CVD law, provided that (a) any amendment shall apply to goods from the other Party only if such application is specified in the amending statute; (b) the amending Party notifies the other Party in writing of the amending statute as far in advance as possible of the date of enactment of such statute; (c) following notification, the amending Party, upon request of the other Party, consults with the other Party prior to the enactment of the amending statute; and (d) such amendment, as applicable to the other Party, is not inconsistent with the GATT, the Antidumping Code, the Subsidies Code, or the object and purpose of this Agreement (which is to establish fair and predictable conditions for the progressive liberalization of trade between the two countries while maintaining effective disciplines on unfair trade practices).		Amendments to Antidumping and Countervailing Duty Law (sec. 404) Any amendment enacted after entry into force of the Agreement to section 303 or title VII of the Tariff Act of 1930, as amended, any successor statutes, or to any other statute that provides for judicial review of final determinations under such statutes or indicates the standard of review to be applied, shall apply to Canada only to the extent specified in the amendment.
Article 1903. Review of Statutory Amendments A Party may request in writing that an amendment to the other Party's AD or CVD law be referred to a panel for a declaratory opinion as to whether: (a) the amendment does not conform to the provisions of subparagraph (d) of Article 1902 above, or		The statement of administrative action will clarify the U.S. understanding that a panel will not be requested until an amendment has actually been enacted into law.

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(b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of subparagraph (d) of Article 1902 above. The panel shall conduct its review in accordance with the procedures of Annex 1903.2. If the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion, then the Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking remedial legislation. If remedial legislation is not enacted within nine months from the end of the 90-day consultation period and no other agreement has been reached, the Party that requested the panel may either (i) take comparable legislative or equivalent executive action, or (ii) terminate the Agreement upon 60-day written notice to the other Party.		
Article 1904. Review of Final Antidumping Countervailing Duty Determinations Provides for the replacement of judicial review of final AD/CVD determinations with binational panel review. Either Party may request that a panel review, based upon the administrative record, a final AD or CVD determination of a competent investigating authority of either Party to determine whether such determination was in accordance with the AD or CVD law of the importing Party. The panel shall apply the same standard of review and the same general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority. A final determination shall not be reviewed under any judicial review proce-	Section 516A of the Tariff Act of 1930, as amended, provides for judicial review of final determinations under the AD and CVD laws by the U.S. Court of International Trade. Within 30 days of publication of any applicable final determination, an interested party who is a party to the proceeding may commence an action in the CIT by filing a summons and complaint, with the content and in form, manner, and style prescribed by the rules of the court, contesting any factual findings or legal conclusions on which the determination is based. The CIT holds unlawful any determination, finding, or conclusion found (1) to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in the case of a determination by the administering authority not to initiate an investigation, a determination by the ITC not to review a determination based on changed circumstances, or a negative ITC reasonable indication of	Amendments to Section 516A of the Tariff Act of 1930 (sec. 401) Amends section 516A to provide that final AD and CVD determinations with regard to Canadian merchandise, shall not be reviewable under section 516A(a), and no U.S. court has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise. Certain exceptions to binational panel review apply and determinations are reviewable under section 516A if: (a) neither the United States nor Canada request review of the determination by a binational panel (provided that the Party seeking judicial review provides timely notice of its intent, i.e., no later than 10 days prior to the deadline for requesting review by a binational panel);

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dures of the importing Party if either Party timely requests a panel with respect to that determination.

The provisions of this Article shall not apply where:

(a) neither Party seeks panel review of a final determination;
(b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither Party sought panel review of that original final determination; or
(c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the entry into force of this Agreement.

A request for a panel must be made in writing to the other Party within 30 days following the date of publication of the final determination in question.

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injury determination; or (2) to be unsupported by substantial evidence on the record or otherwise not in accordance with law, in all other determinations.

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(b) a revised determination issued as a direct result of judicial review if neither the United States nor Canada requested review of the original determination;
(c) a determination issued as a direct result of judicial review that was commenced prior to entry into force of the Agreement; or
(d) the issue under judicial review is the constitutionality of the binational dispute settlement system or its application to a particular determination.

The 30-day time limit for requesting judicial review under section 516A will not begin until the 31st day after notice of the AD or CVD determination (i.e., provides the 30 days required by the Agreement to request panel review before a request for judicial review).

Constitutional issues would be reviewed under one of two tracks:

(1) A general challenge that any provision or amendment in the Act implementing the binational panel dispute settlement system violates the Constitution may be brought in the U.S. Court of Appeals for the D.C. Circuit (determined by a 3-judge court), and shall be reviewable by appeal directly to the Supreme Court (patterned after Gramm/Rudman).
(2) Constitutional issues raised in connection with the facts of a particular AD or CVD determination shall be assigned to a 3-judge panel of the U.S. Court of International Trade.

For constitutional issues, any interested party to the proceeding may file a summons and complaint within 30 days after completion of a binational panel review. Frivolous claims are subject to dismissal and sanctions.

Any interested party who was a party to the relevant AD or CVD proceeding may file a request within the time limit with the U.S. Secretary to request a binational panel review of the final determina-

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Either Party on its own initiative may request review of a final determination by a panel and shall, upon request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of a final determination, request such review.		tion. Receipt of such a request by the U.S. Secretary shall be deemed a request for binational panel review. The party making the request must notify any other interested party and the administering authority or ITC, as appropriate. The U.S. Secretary must notify interested parties if the Canadian Government requests a panel review. Absent a request by an interested party, the U.S. Government cannot request binational panel review. Requests for Review of Canadian Antidumping and Countervailing Duty Determinations (sec. 407) A U.S. person may request, no later than 5 days before the United States may request a binational panel, review of a Canadian AD or CVD determination. On receipt of such request, the U.S. Secretary shall request a panel and notify all interested parties to the proceeding.
The competent investigating authority that issued the final determination in question, and any other person who would have had standing to appear in a judicial review proceeding, shall have the right to appear and be represented by counsel before the panel.		Interested parties have the right to appear and be represented by their own counsel before the binational panel. The administering authority and the ITC will be represented by attorneys who are employees of those agencies.
The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall issue a final decision within 90 days of the date on which such remand action is submitted to it.		[The President may advise the administering authority, the ITC, and the U.S. Customs Service, as appropriate, of the international obligations of the United States under Article 1904 of the Agreement with respect to a final decision of a binational panel or an extraordinary challenge committee. The statement of administrative action would state that panel decisions are binding as a matter of international law.]
The decision of a panel under this Article shall be binding on the Parties with respect to the particular matter between the Parties that is before the panel.		In making a decision in any judicial review proceeding brought under section 516A of the Tariff Act of 1930, a U.S. court is not bound by (but may take into consideration) a final decision of a binational panel or extraordinary challenge committee. The statement of administrative action will clarify the application of this provision.
A Party may pursue the extraordinary challenge procedure set forth in Annex 1904.13 if it alleges that		

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(a) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,
(b) the panel seriously departed from a fundamental rule of procedure, or
(c) the panel manifestly exceeded its powers, authority or jurisdiction, and

that such action materially affected the panel's decision and threatens the integrity of the binational panel review process.

Requires the Parties to adopt rules of procedure to implement the provisions of this Article by January 1, 1989, and identifies certain time limit requirements for such rules.

Requires the Parties to amend their AD/CVD statutes and regulations as necessary to implement this Article.

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Conforming Amendments to Title 28, U.S. Code, Regarding Court of International Trade (sec. 402); Conforming Amendments to the Tariff Act of 1930 (sec. 403)

Makes various amendments to section 516A of the Tariff Act (requiring continued suspension of liquidation of entries pending binational panel review of a final determination, if requested by an interested party who is a participant in the binational panel review); sections 1581(i), 2631(i), and 2643(c) of title 28 of the U.S. Code (limiting the jurisdiction of the U.S. Court of International Trade); chapter 95 of title 28 of the U.S. Code (conferring exclusive jurisdiction to the U.S. Court of International Trade for civil actions to enforce administrative sanctions in connection with violations of administrative protective orders); and section 777 of the Tariff Act of 1930 (providing for disclosure of business proprietary information under protective order; administrative sanctions for violation of protective orders).

Regulations (sec. 405(a)

Authorizes the administering authority, the ITC, and the USTR to issue regulations necessary or appropriate to implement their responsibilities under Chapter 19; initial regulations shall be issued prior to entry into force of the Agreement.

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Article 1905. Prospective Application The provisions of this Chapter shall apply only prospectively to: (a) final determinations of a competent investigating authority made after the entry into force of this Agreement; and (b) with respect to declaratory opinions under Article 1903, amendments to AD or CVD statutes enacted after the entry into force of this Agreement.		
Article 1906. Duration The provisions of this Chapter shall be in effect for 5 years pending the development of a substitute system of AD/CVD rules in both countries as applied to their bilateral trade. If no such system of rules is agreed and implemented at the end of 5 years, the provisions of this Chapter shall be extended for a further 2 years. Failure to agree to implement a regime at the end of the 2-year extension shall allow either Party to terminate the Agreement on 6-month notice.		Effective Date of Title; Termination Provisions (sec. 408) Title IV takes effect on the date the Agreement enters into force. If a binational panel review is pending or has been requested on the date the Agreement should cease to be in force, the determination shall be reviewable under section 516A(a) by request filed within 30 days of the termination of the Agreement. An investigation or enforcement proceeding and sanctions concerning violation of a protective order would continue.
Article 1907. Working Group Establishes a working group that will (a) seek to develop more effective rules and disciplines concerning the use of government subsidies; (b) seek to develop a substitute system of rules for dealing with unfair pricing and government subsidization; and (c) consider any problems that may arise with respect to the implementation of this Chapter and recommend solutions, where appropriate.		Actions Regarding Subsidized Canadian Products Pending Development of Article 1907 Rules and Disciplines (sec. 408) Any U.S. industry that has reason to believe it (1) faces subsidized Canadian competition, and (2) is likely to experience a deterioration of its competitive position before the Working Group develops more effective rules and disciplines concerning the use of government subsidies, may request the USTR to determine whether there is a reasonable likelihood of such conditions. The USTR, in consultation with the Secretary of Commerce, shall determine within 90 days if there is a reasonable likelihood that a petitioning industry meets these criteria. Any determination by USTR does not in any way prejudice or affect any proceeding, determination, or action by Commerce or the ITC under the CVD law or any other trade remedy. At the request of an identified industry, the USTR shall (1) compile specified information under section 305 of the

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		Trade Act, and/or (2) recommend that the President ask the ITC to undertake an investigation under section 332 of the Tariff Act of 1930. The industry may request that the information be updated as often as every year unless and until an agreement to discipline subsidies is developed by the Working Group. The USTR, in consultation with the Secretary of Commerce, shall review the information and consult with the industry, with a view to deciding whether any action is appropriate and feasible under section 301 of the Trade Act of 1974, including initiation of an investigation, or under the countervailing duty law. In determining any appropriate action the USTR, in consultation with the Secretary of Commerce, shall (1) seek the advice of the private sector advisory committees; (2) consult with the Committees on Finance and Ways and Means; (3) coordinate with the interagency trade policy committee; and (4) may ask the President to ask the ITC for advice pursuant to section 131 of the Trade Act of 1974. In determining any retaliation in any section 301 cases initiated as a result of this section, preference shall be given to retaliation on products that benefit from the subsidy programs that are subject to the investigation unless retaliation on other products would be more effective. The statement of administrative action further elaborates on the operation of this provision.
Article 1908. Consultations The Parties shall each designate one or more officials to be responsible for ensuring that consultations take place, where required, so that the provisions of this Chapter are carried out expeditiously.		

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Article 1909. Establishment of Secretariat Establishes permanent Secretariat offices in Washington, D.C., and in the National Capital Region of Canada. Each Party shall be responsible for the operating cost of its Secretariat office. The U.S. shall appoint an individual to serve as secretary of the U.S. section of the Secretariat who shall be responsible for all administrative matters involving the Secretariat in the U.S. (and an obverse provision for Canada). The secretaries shall act jointly to service all meetings of panels or committees established pursuant to this Chapter. Each secretary shall receive and process all relevant papers pertaining to any proceeding before a panel or committee. The Secretariat may provide support for the Commission established pursuant to Article 1802 if so directed by the Commission.		Establishment and Operation of U.S. Secretariat (sec.) Authorizes the appropriation of not to exceed $_____ by the Department of Commerce for each fiscal year after 1988 for the operations of the U.S. Secretariat, for the U.S.-Canada Commission, and for payment of the U.S. share of expenses for binational panels and extraordinary challenge committees.
Article 1910. Code of Conduct The Parties shall, by the date of the entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903 and 1904.		
Article 1911. Definitions Provides definitions for the following terms: "administrative record", "anti-dumping statute", competent investigating authority", "countervailing duty statute", "final determination", "general legal principles", "remand", and "standard of review".		
Annex 1901.2. Establishment of Binational Panels Provides for the establishment of binational panels and the selection of individuals to serve as panelists. The Parties shall, in consultation with each other, develop a roster of 50 candidates; each Party shall select 25 of the candidates, and all candidates must be either U.S. or Canadian citizens. The roster may be amended by the Parties, when necessary, after consultation. Within 30 days of request for the establishment of a panel, each Party		Selection of Panelists (sec.) An interagency group chaired by USTR will recommend U.S. panelists for selection by the USTR, oversee operation of the U.S. Secretariat, and make recommendations to the USTR regarding possible invocation of the extraordinary challege committee. Panelists must be recommended and selected without regard to political affiliation. Roster candidates must provide financial disclosure statements to the interagency group; when selected for a panel, panelists must provide a certification of no conflict of interest.

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shall appoint 2 panelists. The Parties shall normally appoint panelists from the roster. Within 55 days of request for a panel, the Parties shall agree on the selection of a fifth panelist. If the Parties are unable to agree, then the fifth panelist shall be selected by agreement of the four selected panelists or by lot from the roster. A majority of the panelists on each panel are required to be lawyers. The chairman of the panel must be one of the lawyers, and shall be appointed either by majority vote of the panelists or by lot. Decisions of the panel shall be by majority vote and be based upon the votes of all members of the panel. Panelists shall be subject to a code of conduct, and may engage in other business during the term of the panel, but may not appear, while acting as a panelist, as counsel before another panel. Each Party is required to establish appropriate sanctions for violations of U.S. protective orders and Canadian undertakings by panelists relating to disclosure of confidential or privileged information.		Persons appointed by the United States to serve on panels or on extraordinary challenge committees shall not be considered to be employees of, or to be otherwise affiliated with, the U.S. Government. The statement of administrative action will state the intention to give high priority to the selection of former judges as panelists or to serve on extraordinary challenge committees. (Other roster and panel selection procedures to be added to statement of administrative action.)
		Conforming Amendments to the Tariff Act of 1930 (sec. 403) Amends section 777 of the Tariff Act of 1930 to provide for disclosure of all proprietary material (but not privileged material) in the administrative record of a proceeding, under protective order. Persons authorized to have access to such material include the members and staff of the binational panel, or extraordinary challenge committee, and the Secretariat; counsel for parties to the binational panel or committee proceedings and their employees; and any officer or employee of the U.S. Government designated by the administering authority or the ITC. Decisions by the administering authority or ITC concerning access to information shall not be subject to judicial review. Makes it unlawful for any person to violate any provision of a U.S. protective order or an undertaking with Canada to protect proprietary material. Any person who is found by the administering authority or ITC (after notice and opportunity for a hearing) to have violated a provision of a protective order or under-

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		taking shall be liable for a civil penalty of up to $100,000 for each violation and shall be subject to such other administrative sanctions (including disbarment from practice before the agency) as the administering authority or ITC determines appropriate. Each day of a continuing violation shall constitute a separate offense. Any person against whom sanctions are imposed may obtain judicial review of such action by the Court of International Trade. Authorizes the filing of an action in the CIT to enforce the sanctions, and to have access to documents, to summon witnesses, and to issue subpoenas. Authorizes enforcement of subpoenas by a U.S. district or territorial court.
With the exception of violations of protective orders or undertakings, panelists shall be immune from suit and legal process relating to acts performed by them in their official capacity.		With the exception of violations of protective orders, individuals appointed by the United States or Canada to serve on panels or extraordinary challenge committees, and individuals designated to assist appointees, shall be immune from suit and legal process relating to these functions.
The remuneration of panelists, their travel and lodging expenses, and all general expenses of the panel shall be borne equally by the Parties.		
Annex 1903.2. Panel Procedures under Article 1903		
Each panel shall establish its own rules of procedure unless the Parties otherwise agree prior to the establishment of that panel. The procedures shall ensure a right to at least one hearing, as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential, unless the Parties otherwise agree. The panel shall base its decisions solely upon the arguments and submissions of the Parties.		
Unless the Parties otherwise agree, the panel shall, within 90 days after its chairman is appointed, present an initial written declaratory opinion containing findings of fact and its determination pursuant to Article 1903.		

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If the findings of the panel are affirmative, the panel may include in its report its recommendations as to the means by which the amending statute could be brought into conformity with the provisions of subparagraph 2(d) off Article 1902. If, within 14 days of the issuance of the initial declaratory opinion, a Party disagreeing with the opinion presents a written statement of its objections, the panel shall reconsider its initial opinion. The panel shall conduct any further examination that it deems appropriate, and shall issue a final written opinion within 30 days of the request for reconsideration. Unless the Parties otherwise agree, the final declaratory opinion of the panel shall be published, along with any separate opinions of individual panelists and any written views that either Party may wish to be published. Annex 1904.13. Extraordinary Challenge Procedure Within 15 days of a request pursuant to Article 1904(13), the Parties are required to establish an extraordinary challenge committee, comprised of 3 members. The members shall be selected from a 10-person roster comprised of judges or former judges of a federal court of the United States of America or a court of superior jurisdiction of Canada. Each Party shall name 5 persons to this roster. Each Party shall select one member from this roster and the third shall be selected from the roster by the other two members or, if necessary, by lot. The Parties are required to establish rules of procedure for committees, by January 1, 1989. Committee decisions shall be made typically within 30 days of the committee's establishment, and shall be binding on the Parties with respect to the particular matter that was before the panel.		Testimony and Production of Papers in Extraordinary Challenges (sec. 406) Authorizes an extraordinary challenge committee to have access to information and documents, to summon witnesses, take depositions, and issue subpoenas, and to have its subpoenas enforced by any U.S. district or territorial court.

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Chapter 20. Other Provisions		
Article 2001. Tax Convention Nothing in the Agreement affects the rights and obligations of the Parties under the 1980 bilateral tax convention, which shall govern exclusively issues or matters on taxes.		
Article 2002. Balance of Payments Either Party may apply trade restrictions in accordance with GATT Article XII, or apply BOP restrictions to persons of the other party consistent with IMF and OECD provisions, provided they do not constitute arbitrary or unjustifiable discrimination or a disguised restriction on benefits under the Agreement.	Section 122 of the Trade Act of 1974 requires the President to impose temporary import restrictions (import surcharge/quotas) if certain BOP deficit conditions exist (unless imposition would be contrary to the national interest), and authorizes import liberalizing actions if certain BOP surplus conditions exist.	
Article 2003. National Security The Agreement does not prevent either Party from taking any action which it considers necessary for the protection of its essential security interests or to pursue its obligations under the UN Charter to maintain peace and security (i.e., standard GATT national security waiver applies, except separate provisions apply to energy and government procurement).		
Article 2004. Intellectual Property The Parties shall cooperate in the Uruguay Round and other international forums to improve intellectual property protection.		
Article 2005. Cultural Industries Cultural industries are exempt from the Agreement, except for tariff elimination, divestiture of an indirect acquisition, retransmission rights, and the print-in-Canada requirement. A Party may take measures of "equivalent commercial effect" in response to actions that would have been inconsistent with the Agreement if cultural industries were not exempt. (This right is not subject to prior invocation of the dispute settlement provisions.)		The statement of administrative action states that at such time as the President must take remedial action in response to actions that would have been inconsistent with the Agreement but for Article 2005, with respect to enactment by the Canadian Government of legislation, proclamation, or other action having the force and effect of law which, either directly or indirectly, impedes the production, distribution, sale or exhibition of film, TV programs or video recordings, the President shall endeavor to fashion a response in such a manner as to discourage the creation of similar nontariff barriers in other countries. In taking such action, the President shall consult closely with the affected industry to ensure that the equivalent commercial effect of such barriers is fully assessed.

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Article 2006. Retransmission Rights

The Agreement requires equitable remuneration to the copyright holder for simultaneous, unaltered retransmission of copyrighted programming intended for general public (e.g., television programs); and requires permission of the copyright holder in order to retransmit copyrighted program at a different time (e.g., copying for reruns) or in altered form (e.g., substituting different commercials). There are narrow exceptions.

Article 2007. Print-in-Canada Requirement

Canada shall repeal its statutory requirement that defines a Canadian issue of a newspaper or periodical for purposes of the tax deduction of expenses for advertising space as one printed or typeset in Canada.

Article 2008. Plywood Standards

Either Party may delay implementation of tariff concessions on softwood plywood and particleboard, pending agreement that the issues have been resolved satisfactorily, if a panel of experts does not complete its review by January 1, 1989, or does not agree with an evaluation by the Canada Mortgage and Housing Corporation (CMHC) that does not approve use of U.S. standard C-D grade plywood in housing financed by the CMHC. A related exchange of letters requires the CMHC to evaluate U.S. C-D grade plywood and decide by March 15, 1988, whether to approve its use.

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Modifications Affecting Plywood (sec. 201(c))

The Congress encourages the President to facilitate the preparation and implementation with Canada of common performance standards for the use of softwood plywood and other structural panels for construction applications in the United States and Canada. The President must report to Congress on the incorporation of common plywood performance standards into U.S. and Canadian building codes, and may implement the duty modifications under the Agreement when he determines the necessary conditions have been met. Any tariff reductions shall be in equal annual stages ending January 1, 1998, unless the reductions begin after January 1, 1991.

The statement of administrative action further clarifies that the President may commence the tariff reductions only after he reports to Congress, following consultation with Congress and the private sector, that the common plywood performance standards have been sufficiently incorporated into the U.S. and Canadian building codes.

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Article 2009. Softwood Lumber		
The Agreement does not impair or prejudice any rights or enforcement measures arising from the December 30, 1986, Memorandum of Understanding that resolved the countervailing duty case brought by the U.S. softwood lumber industry against Canadian lumber exports, in which Canada agreed to apply a 15 percent export tax on lumber until provincial stumpage pricing practices are altered.		
Article 2010. Monopolies		
The Agreement does not prevent either Party from maintaining or designating a monopoly, but the Parties must endeavor to minimize or eliminate any nullification or impairment of benefits under the Agreement from operation of the monopoly and ensure that the monopoly will not discriminate in its sales against persons or goods of the other Party or engage in anticompetitive practices that adversely affect a person of the other Party.		
Article 2011. Nullification and Impairment		
If a Party considers that application of any measure, whether or not it conflicts with the provisions of the Agreement, causes nullification or impairment of any benefit reasonably expected to accrue to that Party, directly or indirectly under the Agreement, that Party may invoke the consultation, dispute settlement, or arbitration provisions of the Agreement (except on cultural industries and antidumping and countervailing duties).		
Article 2012. Definitions		
Various terms used in the Chapter are defined, including "cultural industries."		
Chapter 21. Final Provisions		
Article 2101. Statistical Requirements		
All statistical requirements for administering and enforcing the Agreement should generally be met from data issued by Statistics Canada and the U.S. Department of Commerce and other U.S. Government agencies.		

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Article 2102. Publication All laws, regulations, procedures, and administrative rulings on matters covered by the Agreement shall be published promptly. Each Party shall publish them in advance and allow opportunity for prior comment.		
Article 2103. Annexes The annexes are an integral part of the Agreement.		
Article 2104. Amendments The Parties may agree upon any modification of or addition to the Agreement, in accordance with applicable domestic legal procedures.	Section 3(c) of the Trade Agreements Act of 1979 requires the President to submit a bill to implement any requirement, recommendation, or amendment of the Tokyo Round MTN agreements, if he determines it is necessary or appropriate to amend, repeal, or enact a U.S. statute. At least 30 calendar days before submitting the bill, the President must consult with the House Ways and Means Committee, Senate Finance Committee, and each committee of jurisdiction. The "fast track" implementing procedures apply. Section 3(c) of the 1979 Act also applies to amendments of the U.S.-Israel Free Trade Area Agreement.	Changes in Statutes to Implement a Requirement, Amendment, or Recommendation (sec. 102(e)) Section 3(c) of the Trade Agreements Act of 1979 shall apply whenever the President determines it is necessary or appropriate to amend, repeal, or enact a U.S. statute in order to implement any requirement, amendment, recommendation, finding, or opinion under the Agreement. However, this "fast track" procedure would not apply to such a bill submitted to the Congress more than 30 months after the Agreement enters into force. Consultation and Lay-Over Requirements (sec. 103(a)) Any provision of the Act that provides that implementation of an action by Presidential proclamation is subject to consultation and lay-over requirements means that the President cannot proclaim such action: (1) unless he first seeks advice regarding the proposed action from appropriate private sector advisory committees and from the ITC; and (2) 60 calendar days have expired after a report to the House Ways and Means and Senate Finance Committees on the proposed action and reasons therefor. Effective Date of Certain Proclaimed Actions (sec. 103(b)) Actions proclaimed under authority of this Act which are not subject to the consultation/lay-over requirements can only take effect 15 days after the

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		proclamation is published in the Federal Register.
Article 2105. Entry into Force The Agreement shall enter into force on January 1, 1989, upon an exchange of diplomatic notes certifying the completion of necessary legal procedures by each Party.		Conditions for Entry into Force of the Agreement (sec. 101(b)) The President may, at such time as he determines Canada has taken satisfactory steps to implement the obligations of the Agreement, exchange notes providing for its entry into force, on or after January 1, 1989.
		Report on Operation of Agreement (sec.) The President must submit a report to the Congress every two years on the operation of the Agreement and on any efforts to further achieve its objectives.
Article 2106. Duration and Termination The Agreement will remain in force unless terminated by either Party upon 6 months notice.	Section 125(a) of the Trade Act of 1974 provides that trade agreements entered into under that Act shall be subject to termination upon not more than six months' notice three years after their effective date. The U.S.-Israel Free Trade Area Implementation Act waived application of section 125(a) (either country may terminate the agreement upon 12 months' notice).	Duration (sec. 105) The Agreement shall remain in force unless terminated in accordance with Article 2106 of the Agreement.

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